

EXHIBIT 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**COX COMMUNICATIONS LAS VEGAS,
INC.,**

Complainant,

v.

NV ENERGY, INC.,

Respondent.

**Proceeding No. 14-267
File No. EB-14-MD-017**

DECLARATION OF PATRICIA ORTWEIN

1. I am the Manager, Rule 9 and Joint Use Telecommunication Contract Administration, of NV Energy, Inc. (“NV Energy”), with a general office address of 7155 Lindell Road, Las Vegas, Nevada 89118. I make this Declaration in support of NV Energy’s Response to Cox Communications Las Vegas’s (“Cox”) Pole Attachment Complaint in the above-captioned case. I know the following based on my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have been employed by NV Energy for nearly 28 years. In this role, my duties and responsibilities relative to this dispute include the management, negotiation and administration of contracts related to joint pole ownership, and use of utility infrastructure by third-party cable television and telecommunication companies.

3. I have reviewed the statements made in NV Energy’s Response to Cox’s Pole Attachment Complaint as well as the exhibits and verify that they are true and correct to the best of my knowledge, information and belief.

4. Many of NV Energy's distribution lines in the urbanized areas of Clark County, Nevada are in close proximity to heavily traveled roadways and highways where a failed pole can cause a significant disruption to traffic and harm the public. Therefore, in 2012, based on this and other factors (e.g., high wind events that have caused pole failures impacting roadways), NV Energy made the decision to construct its lines to the NESC's Grade B construction standard to provide a higher level of reliability and a greater safety margin.

5. Since imposing the NESC Grade B construction requirement in 2012, NV Energy designs its poles to meet the NESC Grade B construction standard and replaces any existing poles that are found to be noncompliant with NESC Grade B construction. NV Energy does so at its own expense. NV Energy does not add or upgrade overhead facilities—its own or third-party—on poles that are non-compliant with Grade B construction standards until the pole is replaced.

6. NV Energy replaces non-compliant poles discovered through the pole attachment application process even when the attaching entity ultimately decides not to attach to the pole. For example, Zayo Group, LLC ("Zayo") submitted an application to attach to fourteen (14) NV Energy poles. Ten of these poles did not meet Grade B construction standards. Zayo ultimately withdrew its application and placed its lines underground. Nevertheless, NV Energy is proceeding with replacement of all ten poles and bearing the entire cost.

7. Due to the magnitude of resources required to complete a statewide survey of the more than 200,000 poles in its service territory, NV Energy has not instituted a program to structurally analyze and correct every one of its noncompliant poles. Instead, and consistent with the NESC and generally accepted engineering practices, NV Energy is addressing the noncompliant poles as they are encountered, either through the utility's own new business/capital

projects or through third-party attachment applications. Since April 2014, NV Energy has identified 110 poles for replacement through non-pole attachment application processes including budget jobs, maintenance work and/or new business/public works projects. As of January 22, 2015, twenty-five of these poles already have been replaced.

8. If NV Energy encounters a pole that is currently non-compliant with NESC Grade B construction, whether it is found through the course of an NV Energy project or through a pole attachment application, NV Energy pays the full cost to replace the existing pole with a new pole that is strong enough to accommodate the existing facilities in a manner consistent with the NESC Grade B construction standard. If the new, Grade B-compliant pole happens to be large enough and strong enough to accommodate a proposed attachment, then the attaching entity bears no cost in association with the pole change-out. If the new pole is not strong enough or large enough to accommodate the proposed attachment, then the third party must pay for the marginal cost required to install a larger class pole with sufficient capacity for their proposed attachment. This marginal “cost-causer” approach is consistent with NV Energy’s past practices, the prevailing industry practice, and Commission precedent. NV Energy does not shift the cost of upgrading its pole plant to the applicant. This necessary and prudent system hardening, at NV Energy’s expense, benefits all attaching entities—including Cox.

9. Whenever, a non-Grade B-compliant pole is discovered, NV Energy places the pole on a replacement list and the pole is changed out within a reasonable timeframe. However, because in many instances the timeframe for replacement is dependent upon a variety of factors beyond NV Energy’s control, including, for example, obtaining permits from the City of Las Vegas, the Nevada Department of Transportation, or the Nevada Bureau of Land Management, it

is impossible for NV Energy to provide third-party attachers with a specific timeline for pole change-outs.

10. The requirements detailed in NV Energy's License Application Requirements are imposed on any and all attachers in NV Energy's service territory. And, NV Energy is implementing the Grade B compliance requirements—with respect to its own new construction and its own modification of its facilities on its poles. As such, there is no discrimination effected by NV Energy's policy.

11. Since 2013, Cox has applied to attach to 268 NV Energy poles (99 in 2013 and 169 in 2014). NV Energy has approved Cox's applications to 76% (203) of those poles. Although not mentioned in Cox's filings, NV Energy approved attachment licenses on 63% (106 of the 169) poles to which Cox sought to attach in 2014.

12. Though Cox fails to mention it in its Pole Attachment Complaint, Cox applied and received licenses for attachments to 32 additional poles during the timeframe at issue (August-December 2014). Of these 32 poles approved by NV Energy but not mentioned by Cox, Cox has only attached to 11. Cox has not requested NV Energy's final inspection of its attachments on any of these 11. Cox has performed no work on the remaining 21 poles, despite the fact that licenses for these 21 poles were issued between October 1 and December 1, 2014.

13. On June 9, 2014, NV Energy sent a letter to CenturyLink informing it of the Grade B construction requirement. If NV Energy discovers that any NV Energy-owned joint use pole fails the Grade B construction standard, it will replace the pole consistent with its policy of upgrading poles to the Grade B standard, regardless of what attaching companies may be impacted.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

This the 2nd day of February, 2015,

A handwritten signature in cursive script, appearing to read "Ortwein", written over a horizontal line.

Patricia Ortwein

EXHIBIT 2

Grade B prior to new attachments by Cox is unreasonable. NV Energy also denies the allegations of the second sentence of this paragraph because its Grade B standard is not unreasonable and does not put Cox at a competitive disadvantage *vis-à-vis* CenturyLink because that standard is equally applicable to both Cox and CenturyLink.

NV Energy admits that Cox accurately quotes from paragraph 227 of the 2011 Order but avers that the quote is taken out of context. Rather than prohibiting prospective policies, the Commission actually approved such policies on the condition that the utility apply those standards at the time the attaching entity submits its attachment request.¹ The scenario described by the Commission in the 2011 Order (and discussed on p. 15 above) is exactly the scenario here: in December 2012, NV Energy notified attachers of the new policy and has, since that time, applied that standard uniformly and consistently to all cable/communications attachers.²

60. NV Energy denies the allegations in the first sentence of this paragraph. NV Energy has implemented a generally applicable, system-wide engineering program to upgrade its distribution poles to Grade B outside of the pole attachment application process.³ NV Energy applies its Grade B construction policy to new construction.⁴ NV Energy also upgrades poles discovered through the pole attachment application process even when the attaching entity ultimately decides not to attach to the pole.⁵ For example, Zayo Group, LLC (“Zayo”) submitted an application to attach to fourteen (14) NV Energy poles. Ten of these poles did not meet

¹ 2011 Order at ¶ 227.

² See generally Exhibit 7 December 10, 2012 Letter from NV Energy to Cox.

³ See Exhibit 2, Declaration of Patricia Ortwein ¶¶ 5-10.

⁴ See *id.*

⁵ See *id.* at ¶ 6.

Grade B construction standards. Zayo ultimately withdrew its application and placed its lines underground. Nevertheless, NV Energy is proceeding with replacement of all ten poles and bearing the entire cost.⁶

Respectfully, Cox completely mischaracterizes the testimony of Mr. Johnny B. Dagenhart, and NV Energy therefore denies that the remainder of paragraph 60 accurately summarizes his declaration. Cox would have the Commission believe that Mr. Dagenhart testified that if NV Energy did not build to Grade B when it first built out its pole network, then NV Energy can never require Grade B construction on future projects. However, Mr. Dagenhart's actual testimony was that a utility cannot require attaching entities to meet Grade B construction if it does not hold itself to the same standard:

If [a utility] chooses to keep the structures at Grade B, then they need to make arrangements to replace or rehabilitate those structures to regain the required capacity. This should be done regardless of whether or not Fibertech is going to make attachments. In the absence of Fibertech, BG&E should already be doing this.⁷

NV Energy follows the policy endorsed by Mr. Dagenhart. NV Energy holds itself to the same Grade B construction standards it imposes on attachers.⁸ Further, whenever a non-compliant pole is discovered, NV Energy places the pole on the replacement list for a change-out, and accomplishes the change-out as soon as possible.

61. With regard to the first sentence of this paragraph, NV Energy denies Cox's articulation of utilities' obligations and therefore denies same. NV Energy denies the remaining allegations of this paragraph to the extent they imply that NV Energy's new policy of *upgrading*

⁶ See *id.* at ¶ 6.

⁷ Dagenhart Decl. ¶ 18.

⁸ See Exhibit 2, Declaration of Patricia Ortwein ¶ 10.

EXHIBIT 3

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FEDERAL COMMUNICATIONS COMMISSION
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**COX COMMUNICATIONS LAS VEGAS,
INC.,**

Complainant,

v.

NV ENERGY, INC.,

Respondent.

**Proceeding No. 14-267
File No. EB-14-MD-017**

DECLARATION OF TANIA JARQUIN

1. I am the Regional Engineer II for the Distribution Design Services, Southern Nevada Region of NV Energy, Inc. (“NV Energy”), with a general office address of 7155 Lindell Road, Las Vegas, Nevada 89118. I make this Declaration in support of NV Energy’s Response to Cox Communications Las Vegas’s (“Cox”) Pole Attachment Complaint in the above-captioned case. I know the following based on my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have been employed by NV Energy for almost six years. In this role, my duties and responsibilities related to this dispute include providing engineering support for the design and maintenance of distribution facilities in accordance with corporate guidelines, industry standards, current construction codes, and governing regulations; performing technical analyses and calculations on distribution plans; analyzing distribution system interruptions and reducing or eliminating similar occurrences; and coordinating the planning, final design, and project schedule of major distribution construction projects.

3. I have reviewed the statements made in NV Energy's Response to Cox's Pole Attachment Complaint as well as the exhibits and verify that they are true and correct to the best of my knowledge, information and belief.

4. Prior to implementing the NESC Grade B construction standard, NV Energy experienced pole failures across its service territory as a result of overloaded poles and improper construction techniques by attaching entities. In some instances, overloaded poles began to lean over roadways. *See* Exhibit A. In other instances, poles began to lean because telecom attachers failed to properly guy the pole. *See* Exhibit A. One pole snapped at the telecom attachment level because of inadequate guying by attaching entities. *See* Exhibit A.

5. NV Energy is still dealing with existing NESC violations and poor construction practices by attaching entities (including, but not limited to, Cox). For example, NV Energy has discovered that on three separate poles, Cox's down-guy wires are attached to one-eyed anchors when they should be attached to triple-eyed anchors to comply with NV Energy construction standards. *See* Exhibit B (Poles 18385, 12149, and 25921). This problem is not just limited to Cox. NV Energy pole 87203 has multiple telecom attachments that are guyed to a single anchor. *See* Exhibit C (Pole 87203). Other attaching entities fail to properly store their slack wire by lashing it out on the strand and do not provide the minimum 40 inches of NESC required clearance below the lowest power facility on the pole. *See* Exhibit D (Poles P78064 and 57909).

6. Under the NESC, Grade B construction is required for all NV Energy distribution poles with communications attachments unless: (a) the pole to which the communication plant is attached is part of a 4 KV system; or (b) both of the following two conditions are satisfied: (i) the supply voltage will be promptly removed from the communications plant by de-energization or other means, both initially and following subsequent circuit-breaker operations in the event of a

contact with the communications plant; and (ii) the voltage and current impressed on the communications plant in the event of a contact with the supply conductors are not in excess of the safe operating limit of the communications-protective devices.

7. The majority of NV Energy's circuits in the Las Vegas valley are 12 KV. Less than 2% (19 circuits out of 1170 circuits) of NV Energy's circuits in the Las Vegas valley are 4 KV. For these few circuits, NV Energy is working towards upgrading these systems to 12 KV as distribution projects arise in those areas. Thus, only 2% of NV Energy's circuits do not require Grade B construction.

8. 122 of the 137 poles Cox places at issue in this proceeding require Grade B construction under the NESC because they support 12KV electric systems or higher. 154 of the 169 total poles to which Cox applied to attach in the timeframe at issue support 12KV electric systems or higher and require Grade B construction. 15 of the 169 poles Cox places at issue in this proceeding support 4 KV electric systems.

9. The protective devices on NV Energy distribution circuits cause the lines to be de-energized in the event of a fault. The breaker will try to restore power a few times to see if the fault has cleared, but after a few unsuccessful attempts it will de-energize the circuit. It is possible, however, that the circuit may not be de-energized in cases where the fault is at the end of the line, far away from the circuit breaker. In these cases, the breaker may read a higher load but it will not be enough to trip the breaker. Due to this uncertainty, NV Energy constructs all of its line to meet NESC Grade B construction to provide a higher level of safety and reliability because the de-energization of the line is not guaranteed. In addition, NV Energy must receive confirmation from attaching entities in order to know whether the communications-protective devices can withstand the fault current caused by the supply conductors making contact with

their lines and the ground. In NV Energy's service territory, the distribution spans are long enough to where if a conductor falls from its attachment point on a pole, it will touch the ground. When the conductor finds a path to ground, a fault current will occur causing a higher voltage than that of the circuit rating. Without this confirmation, NV Energy cannot know whether the conditions exempt its line from Grade B construction standards and must assume that Grade B construction is required.

10. Cox places only 137 of the total 169 poles at issue in its complaint (NV Energy approved Cox's request to attach to all of the remaining thirty-two poles). Of the 137 poles at issue, 60 do not meet the strength and loading requirements of the NESC Grade B construction standard, and three of the poles are currently with NV Energy's Transmission Team undergoing review. NV Energy learned that the 60 poles fail the Grade B construction standard through nine different Cox pole attachment applications. NV Energy will replace all of these poles to accommodate the existing facilities in a manner conformant to the NESC Grade B Construction standard at no cost to Cox. In cases where the new poles are not strong enough to accommodate Cox's proposed attachment or overlash, Cox will pay for the marginal cost required to install a larger class pole with sufficient capacity for its proposed attachment if it chooses to proceed with the attachment.

11. Typically, overlash loads are small compared to the loads that already exist on a pole. Whatever the average of Cox's proposed overlash loads may be, in some instances, like Cox's proposed attachment for the Garces and 8th Street poles, the proposed attachment adds 4-5% incremental load to the pole. If a pole is already overloaded, however, adding any additional load, however minimal, is a risk.

12. Because NV Energy requires Grade B construction for all poles, NV Energy does not perform an analysis of whether a pole satisfies the lower Grade C construction standards.

13. The timeline for pole replacement varies by pole location, is not a simple process, and can be effected by external factors beyond NV Energy's control. For example, Cox submitted an attachment application for poles at Garces Ave between 6th and 8th streets. Nine of the poles in the application failed Grade B analysis, so NV Energy initiated project 3000858402 to replace these nine poles. The project duration, from start (assignment to NV Energy's design team) to finish (replacement by NV Energy's construction team) is expected to take 87 business days. NV Energy assigned the project to its design team on October 13, 2014 and has a goal of completing the project on February 20, 2015. Construction design, review, and approval took 25 days. Lands approval took 14 days. Government approval took 11 days, and it took 7 days to assemble the work order package. After initiating a project to replace the poles in mid-October, NV Energy had a construction plan ready by mid-December. Because this pole line traveled roadways, NV Energy had to submit a lane block request to a traffic barricade company on December 26, 2014. The traffic barricade company must get approval from the City of Las Vegas and it submitted its plan to the city on December 31, 2014. The traffic barricade company did not receive its approved traffic control plans until January 27, 2015. NV Energy requested a renewal of the traffic control plans the same day because the approved plans expire on January 31, 2015. NV Energy crews attempted to dig pole holes on January 20, 2015 but were shut down by a City of Las Vegas Inspector who claimed that NV Energy needed a city permit to perform the work. *See* Exhibit E (Project Chart for 3000858402).

14. The foregoing is just an example of the circumstances beyond NV Energy's control that prohibit adherence to any time line or time projection in a pole replacement project.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

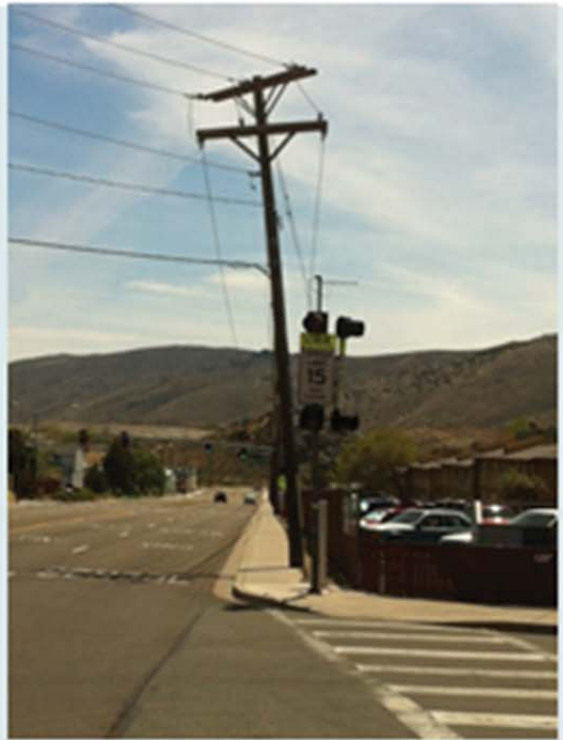
This the 2nd day of February, 2015,



Tania Jarquin

EXHIBIT A

NV Energy North



Overloaded pole

NV Energy South

Improper guying for
telecom attachment





NV Energy South Pole Failure

Inadequate guying by
attaching entities
caused pole to break at
telecom attachment
level



EXHIBIT B

Pole 18385



Pole 12149



Pole 25921



EXHIBIT C

Pole 87203





EXHIBIT D

Pole 78064



Pole 57909

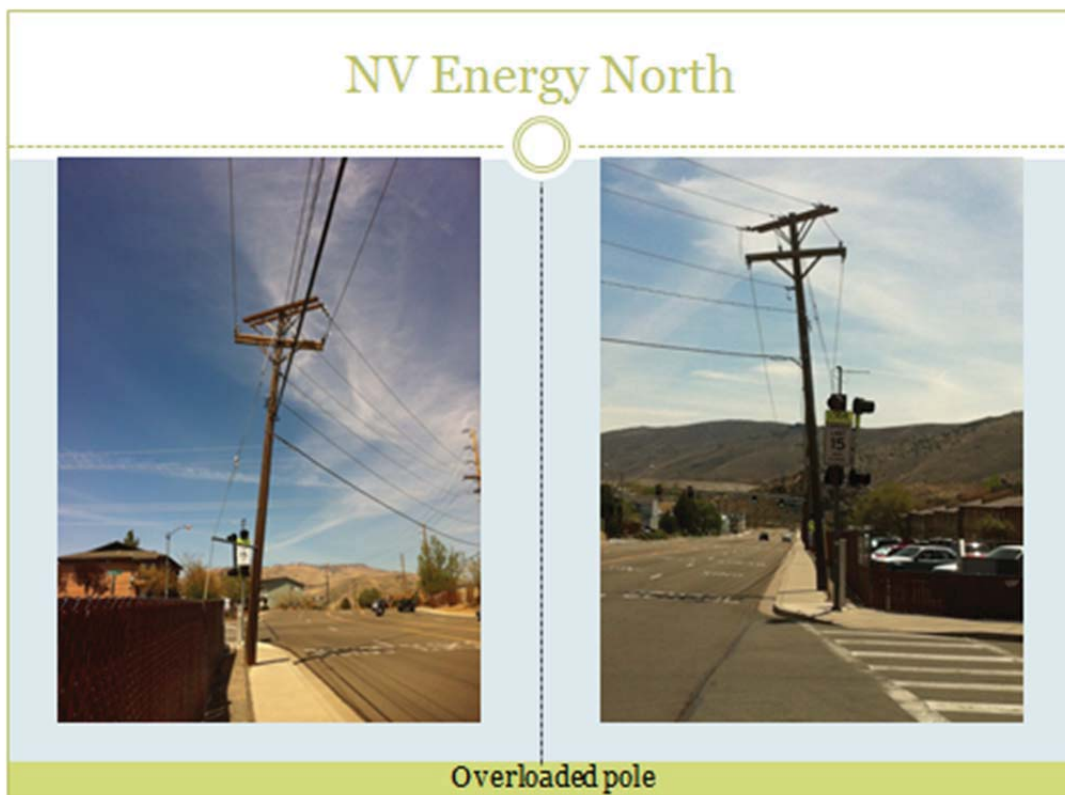


EXHIBIT 4

taken into account when third parties made attachments to its poles. NV Energy's concern arose, in part, out of the discovery of overloading of NV Energy poles by third-party attachers, resulting in pole failures in some instances, as well as NESC violations by third-party attachers.¹

The following images are examples of such loading and NESC violations:

OVERLOADED POLE



¹ See Exhibit 6, June 21, 2013 letter from Colin Harlow to Kristen Weatherby.

IMPROPER GUYING

NV Energy South

Improper guying for
telecom attachment



INADEQUATE GUYING

NV Energy South Pole Failure

Inadequate guying by
attaching entities
caused pole to break at
telecom attachment
level

